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NEW DELHI, WEDNESDAY, JUNE 10, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi the 28th May, 1953

S.R.O. 1072.—WHEREAS the election of Shri Karnail Singh, as a member of the Legislative Assembly of the State of Punjab, from the Dabwali constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ajayab Singh, S/o Shri Daulat Singh, and Shri Ram Lal S/o Shri Dulchand Mahajan, Village Dabwali, Tahsil Sirsa, District Hissar;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, HISSAR

PRESENT:

Shri Maharaj Kishore—*Chairman.*

Shri T. C. Sethi—*Member.*

Shri G. S. Gyani—*Member.*

ELECTION PETITION No. 111 of 1952

Election petition presented to the Election Commission, India, New Delhi on 17th April 1952.

Shri Ajayab Singh and Shri Ram Lal Petitioners

Versus

1. Shri Karnail Singh.
2. Shri Ram Dial.
3. Shri Tara Chand.
4. Shri Mathra Dass.
5. Shri Hazari Lal
6. Shri Mustan Singh.
7. Shri Gurnam Singh
8. Shri Gurcharan Singh.
9. Shri Seh Dev.

10. Shri Sita Ram Baghla.
11. Shri Ram Gopal.
12. Shri Murlī Dhar.
13. Shri Premsukh Dass.
14. Shri Inder Singh
15. Shri Narain Singh.
16. Shri Purkha.
17. Shri Gur Raj Singh.
18. Shri Surja.
19. Shri Lakshmi Narain; and
20. Shri Sher Singh—Respondents.

JUDGMENT

This is an election petition by Shri Ajayab Singh and Shri Ram Lal two registered voters on the electoral rolls of Dabwali Constituency Hissar District against the election of Shri Karnail Singh respondent No. 1 resident of village Halbuwana, Tehsil Sirsa to the Punjab Legislative Assembly. The election to fill this seat was held in January 1952, and Respondent No. 1 Shri Karnail Singh was declared to have been duly elected to fill this seat on 23rd February 1952, by Shri G. S. Mann, Returning Officer.

2. The petitioners allege that the election of Shri Karnail Singh to fill this seat is wholly void because its result has been materially affected by the illegal and improper rejection of the nomination paper of Shri Sher Singh respondent No. 20 by Shri G. S. Mann, Returning Officer for this Constituency on 9th November, 1951, which was the date fixed for scrutiny of nomination papers. They contend that the nomination paper of respondent Shri Sher Singh was complete and legal in all respects and it bore the full description of respondent No. 20 which was sufficient to identify him and to locate him in the electoral rolls of the constituency and that the said respondent was in fact duly located by the Returning Officer, that the absence of the name of the part of the electoral roll in the particular column of electoral number of the candidate did not make any difference in the circumstances of the case, that the defect, if any, was of technical nature with no force or substance in it and that the Returning Officer had duly located the name of respondent Shri Sher Singh by the description given in the column meant for the purpose and, therefore, there was no justification to reject the nomination paper of Shri Sher Singh.

3. Out of 20 respondents in all, only 2 i.e. Karnail Singh the successful candidate and Shri Sher Singh whose nomination paper was rejected by the Returning Officer by an order passed on 9th November 1951 and which is the subject matter of this petition have appeared before the Tribunal through counsel.

4. Shri Karnail Singh pleads that the nomination paper of Shri Sher Singh was properly rejected by the Returning Officer *suo-motu* and that its rejection had not materially affected the result of the election because even if the nomination paper of respondent Shri Sher Singh had been accepted he being only a covering candidate for respondent No. 1 would have withdrawn in favour of respondent No. 1 and would not have contested the election against him, that the order of rejection was quite valid in so far that the nomination paper of Shri Sher Singh was not properly filled in and the omission or defect which was the basis of rejection was not technical but on the other hand it was of substantial character, that the Returning Officer was unable to locate the name of Shri Sher Singh respondent from the electoral roll of this Constituency from the description given in the nomination papers and it was respondent Shri Sher Singh himself who pointed out his name to the Returning Officer after considerable difficulty and after fumbling with a number of electoral rolls. It is further pleaded that the present petition by Shri Ajayab Singh and Shri Ram Lal was devoid of any force in the absence of any challenge to the election by respondent Shri Sher Singh or by any candidate who had stood or withdrawn after nomination, that Shri Sher Singh's conduct in this petition by supporting the pleas advanced by respondent No. 1 was against the petitioners. It is also pleaded that the nomination paper of Shri Sher Singh was defective and invalid not only on the ground on which it had been rejected but on some other grounds as well viz. that his father's name in column No. 3 of the nomination paper was mentioned as Tarlok Singh while in the electoral roll it is Talok Singh and that in column No. 8 neither the name of the village nor of the town nor of the police station nor tehsil nor the name

of the constituency was given. Lastly it is pleaded that the petitioners had not filed their petition in good faith and they have only been set up by Pandit Ram Dial respondent No. 2, the defeated candidate and, therefore, their petition was not *bona fide* and in their own interest.

Shri Sher Singh respondent No. 20 has supported the pleas advanced by Shri Karnail Singh.

On the above pleading of the contesting parties the following issues were struck:—

1. Whether the nomination paper of Shri Sher Singh respondent No. 20 was invalidly and illegally rejected by the Returning Officer and was the defect pointed out only of a technical nature and the respondent was located outright by the Returning Officer notwithstanding this defect which was enough for him according to law and if so its effect? (Onus objected to).
- 2(a) What is the effect of Shri Sher Singh respondent's conduct in this petition in so far that he is supporting the pleas advanced by respondent No. 1 and is not contesting the election of respondent No. 1?
- 2(b) Whether Shri Sher Singh would have withdrawn from the contest in favour of respondent No. 1 and if so, rejection of his nomination paper did not affect the result of the election in any way?
3. Whether the nomination paper of Shri Sher Singh was defective and invalid on other grounds (detailed in para 10 of the written statement) besides the one on which it was rejected and can those grounds be now taken up and if so, what is its effect?
4. Whether the petitioners have not filed their petition in good faith and they have only been set up to by respondent No. 2 and if so, its effect?

Issue No. 1.—This issue can be split up in three parts, firstly whether the nomination paper of Shri Sher Singh was properly filled in, secondly if not so, then was the defect found out by the Returning Officer a technical one and not of substantial character and thirdly, how the rejection of the nomination paper of Shri Sher Singh affected the result of the election.

Shri Sher Singh respondent No. 20 presented two nomination papers on 5th November 1951 which was the last date for filing nomination papers and these nomination papers are Ex. D.W. 1/1 and Ex. D.W. 1/2. Both these nomination papers were scrutinized by Shri G. S. Mann, Returning Officer D.W. 1 on 9th November 1951 which was the date fixed for scrutiny and order passed by him on these nomination papers runs as follows:—

“(A. I have scrutinized the eligibility of the candidate, the proposer and the seconder and find that they are respectively qualified to stand for election, to propose and to second the nomination.

The name of the part in which the name of the candidate is written is not given. Rejected”. See Ex. D.W. 1/3 and D.W. 1/4.) The portion marked A to A in this order is in print while the rest of the order is in type. According to old election Law the provisions regarding the filing and presentation of nomination papers and their scrutiny were protanto the same as contained in the Representation of the People Act, 1951 and although there was no such provision in the old law, a proviso has been added now by Section 36(4) of the Act, yet the consensus of opinion was in favour of the view that no nomination paper should be rejected on the ground of any technical defect which was not of a substantial character and it appears that in view of this opinion expressed in election petitions decided under old law, the Legislature thought it fit to make a provision on this point and with that object in view the following provision has been added as Section 36(4):

“The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of substantial character”.

We have, therefore, to see whether in the present case the defect which was found in the two nomination papers of Shri Sher Singh was a technical defect and was not of substantial character. In column No. 8 of the nomination paper which is meant for the Serial No. of the candidate in the electoral roll of the Constituency in which his name is included, Shri Sher Singh mentioned 1400 (Ward No. 1) but he did not mention *Strsa* in this column. This is the only defect or omission which was found at the time of scrutiny and as far as I can see from the order the order of rejection was based on this defect alone. According to foot note 6

under the nomination papers there is a direction given according to which where the electoral roll is sub-divided into parts and serial Nos. are assigned to the electors entered in each part a description of the part in which the name of the person concerned is entered must also be given in columns 8, 10 and 14. We find that this direction was not complied with by Shri Sher Singh regarding the entry made in column No. 8. It is argued before the Tribunal that this defect was fatal to the nomination papers of Shri Sher Singh and that their rejection was inevitable. In the rules framed under Section 169 of the Act of 1951 Serial No. of an elector in Electoral roll includes such particulars regarding the name or description of the electoral area in reference to which the said electoral roll has been prepared as will identify the entry relating to such elector in that electoral roll. On the strength of this definition of Serial No. it is urged that it was incumbent on Shri Sher Singh to note the electoral area in which the entry relating to his name existed. In this particular case it is not denied that no candidate objected to the nomination papers of Shri Sher Singh on any ground whatsoever meaning thereby that the rejection of the papers of Shri Sher Singh took place on an objection taken up by the Returning Officer *suo motu*. The evidence lead on behalf of the petitioners is to the effect that there was no difficulty in locating the entry relating to Shri Sher Singh in the electoral rolls and that the Returning Officer at once located it while on behalf of the respondent Shri Karnail Singh it is urged and sought to be proved that the Returning Officer was unable to locate the entry and that it was after considerable difficulty and after fumbling number of electoral rolls when Shri Sher Singh pointed out the entry relating to him to the Returning Officer. According to Section 33(5) of the Act when a nomination paper is presented the Returning Officer has to satisfy himself that the names and the electoral roll Nos. of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls and the Returning Officer can at that time permit a clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them in conformity with the corresponding entries in the electoral rolls and where necessary direct that any clerical or printing error in the said entries shall be overlooked. There is a further provision under Section 33(6) that if at the time of the presenting of the nomination paper the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the Constituency for which he is Returning Officer he shall for the purposes of Sub-Section 3 require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such rolls. When the scrutiny of the nomination papers takes place the Returning Officer has to examine the nomination papers and decide all objections which may be made to any nomination, and may, on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject on certain grounds as enumerated under Section 36(2). It is a common ground that nomination papers of Shri Sher Singh were rejected under Section 36(2) (d) i.e. on the ground that there had been a failure to comply with some provisions of Section 33. As already remarked above according to the order of rejection the Returning Officer had found that Shri Sher Singh was qualified to stand for election because he had scrutinized the eligibility of the candidate which in other words would mean that he was satisfied that the name of Shri Sher Singh was registered as a voter on the electoral roll referred to by him but the nomination papers were rejected simply on the ground that the name of the part in which the name of the candidate was written was not given which would clearly mean that the Returning Officer rejected the nomination papers in question simply on a technical ground. It is a common ground that in Dabwali Constituency with which we are concerned only Sirsa town and Dabwali town were divided in Wards but in Dabwali town Ward No. 1 the number of voters did not go above 700 or 800 which would mean that No. 1400 could only be found in Ward No. 1, Sirsa and consequently there could not be any difficulty whatsoever in tracing out the entry against No. 1400 Ward No. 1 Sirsa. Shri G. S. Mann, Returning Officer states that at the time of the scrutiny he tried to find out the name of Shri Sher Singh in the electoral roll from the description given in the nomination papers but he could not find it out, that after some time had been spent in this manner Shri Sher Singh himself showed him the entry relating to his name from the electoral roll. As is clear from the provisions of Section 36(2) the Returning Officer had the power to hold a summary inquiry if any doubt arose in his mind, as was the case here, because no other person raised any objection against the nomination papers of Shri Sher Singh and thus in my opinion summary inquiry was completed when Shri Sher Singh took out the entry relating to him and showed it to the Returning Officer because there was nothing left for the Returning Officer so far as the omission in the entry in column No. 8 was concerned. It is not denied that the nomination papers of respective candidates were scrutinized one after the other which would mean that the two nomination

papers of Shri Sher Singh were taken up one by one and in any case the doubt created in the mind of the Returning Officer must have been removed by the entry having been shown to him against No. 1400 when he took up the second nomination paper of Shri Sher Singh. The Returning Officer in his statement takes up the position that he could not say if he passed the order of rejection of Shri Sher Singh's nomination papers after or before Shri Sher Singh had pointed out his name from the electoral roll but no other witness produced in the case has dared to say that Shri Sher Singh pointed out the entry relating to him after his nomination papers had been rejected. In fact it could not be so because after Shri Sher Singh's nomination papers had been rejected there could be no occasion for him to show to the Returning Officer the entry relating to him because by then the Returning Officer must have taken up in hand the next nomination paper. The Returning Officer also states that even after Shri Sher Singh had pointed out his particulars noted in the electoral roll he was not satisfied whether he had pointed out to him the entry relating to him or to some other person of that name but this is a strange position because Shri Sher Singh could only show the entry against his number in the list and if any doubt had arisen in the mind of the Returning Officer he had to remove it by statutory inquiry and to me this does not appear to be the correct position because none of the candidates or the agents of the candidates who appeared before the Returning Officer ever objected to the identity of Shri Sher Singh. Moreover this position of the Returning Officer appears to be rather contradictory because in the order which he passed he says that he had scrutinized the eligibility of the candidate and he was satisfied that he was qualified to stand for election and that could only be said if he had traced the entry relating to Shri Sher Singh and had found its particulars to be correct. In fact Shri Sher Singh in his written statement, which in my opinion is admissible in evidence under Sections 8 and 14 of the Indian Evidence Act only says that when the Returning Officer could not locate him in the electoral roll, he pointed out his name to him and he does not anywhere say that he took so much time as 15 to 20 minutes or that he found out the name after fumbling with a number of electoral rolls. In my opinion, therefore, it is but clear that the defect or the omission whatever we may call it in the nomination papers of Shri Sher Singh was only a technical one.

* We have now to see whether this defect was of a substantial character or - not and my answer to it is in the negative i.e. the defect in question was not of substantial character. A number of instances of previous cases decided by different Election Tribunals under the old law as well as under the new law have been cited before us; but it cannot be denied that each case depends on its own circumstances. A similar question arose in an election petition No. 9 of 1952 decided by Election Tribunal Delhi Ch. Surat Vs. Sh. Jang Bahadur Singh and others and it was held in that case that the mentioning of the sub-division in the electoral roll in which the serial No. occurs is undoubtedly of considerable assistance to the Returning Officer and its sole purpose is to facilitate identification of the proposer so that no time is wasted in ascertaining whether the proposer is a person qualified to act as such when there is no doubt about the identity of the proposer or his capacity to act as proposer. A mere omission of a small detail in his description in the nomination paper ought not to affect the matter and with the description given it was held that the omission in question was only a technical one and was not substantial character. Case before us stands on a stronger footing because according to the order passed by the Returning Officer he was satisfied with the eligibility of the candidate and that being so it could not be urged with any force that the entry relating to Sh. Sher Singh was not traceable. It was argued before us by the learned counsel of the respondent that only the typed part of the order of the Returning Officer is the effective part of the order but I do not agree with this contention because if the printed part of the order i.e. A to A was not sought to be enforced then the Returning Officer could very well have scored it out. On behalf of the respondent reliance has been placed on a decision given by the Election Tribunal West Bengal in election petition No. 151 of 1952 where the candidate whose nomination paper was rejected had not mentioned the name of the Parliamentary Constituency in the electoral roll which meant that the nomination paper did not show that the candidate was qualified to stand for the Constituency for which he filed his nomination papers and therefore that case stands on quite different footing. We were also referred to the judgment of Election Tribunal West Bengal in election petition No. 122 of 1952 in which it was held that the defect in the description given in column No. 8 was of a substantial character and was not of trivial nature. I, however, find that the facts of that case are quite distinguishable from the facts of the present case and the finding in that case proceeded on the peculiar facts of that case it was remarked in that very judgment that if the candidate or his agent was present at the time of scrutiny and if any one of them told the Returning Officer that serial No. of the candidate would be found in the electoral roll of certain village and that this village

was mentioned in column No. 5 as the address of the candidate then the Returning Officer should have located in the electoral roll of that village before passing his orders and that is exactly what happened in this case. Sh. Sher Singh was present before the Returning Officer and he at once pointed out the entry relating to him to the Returning Officer, hence this West Bengal case has no application to the facts of the present case.

In *E. Few Vs. C. E. Gibbon* reported in Sen and potdars Indian election cases page 66 it was held that the Returning Officer had powers to make summary inquiry in deciding objections as to nominations and while doing scrutiny of nomination paper he performs a judicial function and should act judicially and after that he should not reject a nomination if any obscurity in nomination could be cleared up by summary inquiry and he should do so. In the present case when the Returning Officer took up the objection *suo moto* Sh. Sher Singh came forward and pointed out the entry relating to him against No. 1400 which amounted to a summary inquiry by the Returning Officer. Hence after this had been done rejection of the nomination paper was clearly unjustified.

A number of other cases decided by different Election Tribunals in the Province have also been cited before us. As already remarked each case depends upon its peculiar circumstances and therefore I think it unnecessary to cite all those cases. I am, therefore, of the opinion that the nomination paper of Sh. Sher Singh was improperly rejected because the defect which was found by the Returning Officer in Sh. Sher Singh's nomination papers was only a technical one and was not substantial character.

I now come to the effect of this improper rejection of Sh. Sher Singh's nomination papers on the result of election of this Constituency. It is not denied before me that the consensus of opinion has always been that if a nomination paper is improperly and wrongly rejected then it materially affects the result of the election meaning thereby that a presumption arises in favour of the election having been materially affected if the nomination paper of any candidate is improperly rejected but it cannot be denied that this presumption is rebuttable which will depend upon the peculiar facts of a particular case. I will, therefore leave this third part of issue No. 1 with the remarks that in view of the nomination papers of Sh. Sher Singh having been wrongly rejected the result of election was materially affected but this may be rebutted by certain circumstances as urged in this case and which are the subject matter of issues No. 2(a) and 2(b) and I will discuss this point under these two issues.

Issue No. 2(a).—On behalf of the respondent it has been vehemently urged that the conduct of Sh. Sher Singh during the proceedings in this election petition is a clear proof of the fact that he was only a covering candidate for respondent Sh. Karnail Singh and he had no intention whatsoever to contest the election of respondent No. 1. The conduct of Sh. Sher Singh which is referred to is the written statement filed by him through his counsel Malik Jesa Ram. It is a pity that we could not examine Sh. Sher Singh as a witness in the case because he unfortunately died in tuberculosis hospital at Amritsar only a day before he was to be examined as a witness. The fact, however, remains that he filed a written statement supporting the pleas advanced by Shri Karnail Singh but I fail to understand how this conduct of Sh. Sher Singh can advance the cause of respondent No. 1 because this conduct came into existence on 5/6th September 1952, i.e. about 7 months after the result of the election was announced. According to respondent No. 1 himself Sh. Sher Singh was suffering from tuberculosis at the time he filed his nomination papers and it is admitted that he was admitted in Tuberculosis Hospital at Amritsar in November 1952, i.e. only about 2 months after he filed his written statement above mentioned and he died in that hospital on 6th March 1953, meaning thereby that he had not much interest left in these proceedings when his written statement was filed and it was not difficult for Sh. Karnail Singh respondent and other common relatives to prevail upon Sh. Sher Singh by that time to support their cause because he had no interest left in the matter. If as Sh. Karnail Singh alleges he could prevail upon Sh. Sher Singh to come forward as a covering candidate for him at the 11th hour being related to him then it was not difficult for Sh. Karnail Singh to prevail upon him to file a written statement suitable to his cause. Hence in my opinion the conduct of Sh. Sher Singh by filing a written statement in favour of Sh. Karnail Singh does not improve matters in any way. On the other hand we find that the conduct of Sh. Sher Singh soon after the rejection of his nomination papers is a clear proof of the fact that he was very serious about his nomination and he fought the matter to his best. This conduct of his is apparent when we see that Sh. Sher Singh filed a writ application in the High Court of Judicature Punjab at Simla on 12th November 1951 which was, however, rejected on 20th November 1951 (see Ex. P-1 and Ex. P-2).

Sh. Karnail Singh finding that this hurdle was difficult to be crossed has, in my opinion, manufactured lot of evidence which has not at all impressed me. Evidence has been lead to prove that Sh. Sher Singh did not feel interested at all in his nomination papers and he was made to stand as a covering candidate for Sh. Karnail Singh at the 11th hour and when his nomination paper was rejected Sh. Karnail Singh persuaded him to go to Simla to file a writ application in the High Court in order to gain time for his election propaganda because it was considered that by filing this application the election will be postponed. This explanation came on the record for the first time after the death of Sh. Sher Singh and before that there was not a word on the record in this direction. Written statements of Sh. Karnail Singh and Sh. Sher Singh were absolutely silent on this point and although as many as 12 witnesses had been examined for the respondent yet not a single question was put to them in this direction and even Sh. Hukam Singh D.W. 12 who is President of Akali Dal was not asked if Sh. Karnail Singh's propaganda was not up to the mark in November 1951 or whether they had ever thought for gaining time for his propaganda. In support of this contention D.W. 14 Sh. Jodh Singh Advocate Sirsa, D.W. 15 Bachan Singh real younger brother of Sh. Sher Singh, D.W. 17 Sh. Sher Singh a common relative of Sh. Karnail Singh and Sh. Sher Singh deceased and Sh. Karnail Singh respondent himself have been produced before us. Sh. Jodh Singh was made to produce an application Ex. D.W. 14/1 which according to him was presented for obtaining a copy of the order of 9th November 1951 by which Sh. Sher Singh's nomination papers were rejected and which application was returned by the Returning Officer with his order Ex. D.W. 14/2 dated 10th November 1951 without supplying the copy in question. This witness says that this application remained with him although Sh. Sher Singh and Sh. Karnail Singh had come to him for getting a copy of this order and then he had a talk with Sh. Sher Singh as to why he wanted to go to the High Court. I quite believe that this witness was approached by Sh. Sher Singh for obtaining a copy of the order but further part of his evidence has not impressed me. If this witness was really in the know of these facts then he must have been summoned earlier to corroborate Sh. Sher Singh's statement but that was not done. Moreover I fail to understand why the application Ex. D.W. 14/1 remained with this witness because in ordinary circumstances it should have been handed over to Sh. Sher Singh for being shown to his counsel at Simla lest he required a copy of the order regarding which he had to file the writ application. Much of the force of the evidence of this witness is gone when we find that he appears to be a party man and he had to admit that he had been opposing Pt. Ram Dyal respondent No. 2 when his name was being considered for Congress ticket from this Constituency and he was also a member of the United Front which was proposed to oppose the Congress in local bodies elections in December, 1952. D.W. 15 Bachan Singh, as already noted is the younger brother of Sh. Sher Singh deceased and he is admittedly related to Sh. Karnail Singh and if we look through his cross-examination we find that he is a witness who has least regard for truth. He tried his level best to mislead us and say that Sh. Karnail was married with his real sister's daughter but after great prevarication he had to admit that Sh. Karnail Singh's wife was the daughter of Sh. Sher Singh's and Sh. Bachan Singh's father's sister's daughter, meaning thereby that Sh. Karnail Singh was not married with the real niece of Sh. Sher Singh and of this witness. D.W. 17 Sh. Sher Singh of Chokarian is another witness whose daughter is married with Sh. Karnail Singh's wife's brother's daughter and whose daughter is married with Sh. Karnail Singh's wife's brother which means that he is common relative but his evidence is hardly worthy of much belief. The dramatic appearance of this witness on the scene for being introduced into this drama would not appeal to a normal mind because I fail to understand why Sh. Karnail Singh and Sh. Boota Singh went to the bus stand on that particular morning as if they anticipated Sh. Sher Singh's arrival by bus and then Sh. Sher Singh was made to play such an important part as to go along with other Sh. Sher Singh to Simla and got a writ application filed by Sh. Sher Singh. This witness Sh. Sher Singh, according to his statement, had come to Sirsa to purchase some vegetables and Gur but he cannot state what quantity he purchased and from where he purchased and without carrying these articles to his home he left for Simla. The matter does not rest here because he states that he undertook to incur the expenses of this writ application but when he found that the alleged Rs. 100 note, which according to him, was with him was not sufficient for the purpose, he says that Sh. Sher Singh paid his own railway and lorry fare. At this stage we may advert to the return of election expenses filed by Sh. Sher Singh and Sh. Karnail Singh because these expenses were not shown in any of these two returns. Sh. Sher Singh's return is admittedly wrong according to respondent's own evidence because he had not even shown his railway and lorry fare which he had spent but if all this amount had been spent by Sh. Sher Singh D.W. 17 for Sh. Karnail Singh then Sh. Karnail Singh should have shown it in his return. All this goes to show that the story of Sh. Sher Singh having been sent to Simla by Sh. Karnail

Singh simply in order to gain time for his propaganda is a fake story and on the other hand to my mind it is clear that Sh. Sher Singh was serious about his nomination till his writ application in the High Court was rejected because after that he had no hope. It may be urged that if Sh. Sher Singh was serious he would have come forward with an election petition but by that time Sh. Sher Singh might have lost all interest in such affairs as according to respondent himself he had been suffering from tuberculosis since 6 or 7 months before the election and, therefore, his disease might be advancing when time came for filing an election petition and it may be that by that time common relatives of Sh. Sher Singh and Sh. Karnail Singh had approached him and he gave up further interest. In any case this is only a speculation but the fact remains that the conduct of Sh. Sher Singh in having gone to the High Court is sufficient proof of the fact that he was serious regarding his nomination because the evidence lead by Sh. Karnail Singh to cross this hurdle is in my opinion all manufactured evidence and is not worthy of belief. I, therefore, hold on issue No. 2(a) against the respondent.

Issue No. 2(b).—The next point taken up by the respondent is that Sh. Sher Singh was only a covering candidate for him and even if his nomination papers had been accepted he would have withdrawn and, therefore, the result of the election was not in any way affected by the rejection of the nomination papers of Sh. Sher Singh. Here again, I am of the opinion that the evidence which has been lead by the respondent appears to have been manufactured for the purpose and in any case it is not such which would go to prove the contentions of the respondent.

According to the respondent he had been given an Akali ticket to fight for this seat on 2nd November 1951 when the meeting of Akali Dal presided over by Sh. Hukam Singh D.W. 12 was held at Ambala. In my opinion the evidence on record will go to show that till the filing of the nomination papers i.e. till 5th November 1951 Akali ticket for this seat was not given to any particular person and that it was given after 5th November 1951, Sh. Hukam Singh is no doubt a very respectable witness but at the same time he is a party-man and in any case he does not commit himself about the date of the meeting at Ambala and he only says that from the letter dated 16th October 1951 Ex D.W. 12/4 he concludes that the meeting must have taken place after 21st October 1951. This non-committal statement is not very convincing because there are other facts on the record which would go to show that the question of the ticket had not been decided till 5th November 1951. We find that Sh. Mustan Singh D.W. 6 and Sh. Gur Raj Singh D.W. 5 had also declared in their nomination papers the same preference in symbols as was done by Sh. Sher Singh and Sh. Karnail Singh. The symbol of 'Bow and Arrow' was the symbol of the Akali Party which means that all these four persons were in the run at that time and Akali ticket had not been given to anyone till then because otherwise Sh. Mustan Singh and Sh. Gur Raj Singh would not have declared this preference of their symbol. These 2 witnesses i.e. Sh. Mustan Singh and Sh. Gur Raj Singh are now prepared to help the respondent but their nomination papers belie them. D.W. 2 Jathedar Bishan Singh and D.W. 3 S. Bakh-tawar Singh have been produced as the President and Secretary respectively of District Akali Jatha, Hissar in 1951-52 and they state that their Jatha had recommended Sh. Karnail Singh respondent for Akali ticket but these witnesses are making haphazard statements and they are not supported by any document. S. Sampuran Singh D.W. 4 Jathedar of Akali Dal Pepsu has been produced who says that in October 1951, he was asked by the High Command of the Akali Dal that he should tour the Dabwali constituency and find out who could be the best Akali candidate out of Sh. Karnail Singh and Jangir Singh and that he recommended the name of Sh. Karnail Singh. This witness has also made an oral statement and he is not supported by any documentary evidence is his support. It is sought to be proved that a meeting was held at Kalanwali on 19th October 1951 and recommendations were sent to the central office in writing but the story about holding the meeting on 19th October 1951 is narrated by S. Sampuran Singh D.W. 10 which is hardly worthy of very much consideration. I would not believe that such haphazard meetings were being held for such important matters. The best proof in support of the evidence lead on this point would have been the cash registers kept at the headquarters regarding the deposits which were made by Sh. Sher Singh and other applicants for getting Akali ticket. It is admitted that certain amount was deposited by the applicants but strangely enough that record has not been produced before us and Sh. Har Dyal Singh D.W. 11 has tried to explain it away which explanation is a lame explanation. Another piece of evidence which has been manufactured is evidence of Sh. Jangir Singh D.W. 9 about whom it is said that originally he was to become the covering candidate but when he did not succeed in getting his name enlisted on the voters' list till 5th November 1951 then Sh. Sher Singh was approached and his nomination papers were filed as a covering candidate of Sh. Karnail Singh. In my opinion this Sh. Jangir Singh has

only been introduced in order to bring in Sh. Sher Singh as a covering candidate at the eleventh hour otherwise I fail to understand why the Akali Dal had selected such a person whose name did not even exist on the voters' list and why all this risk was taken. Sh. Sher Singh was, according to respondent, a sickly man and had no interest in this election then how was it that he at once came to the court on 5th November 1951, to become a covering candidate for Sh. Karnail Singh. The evidence about making Sh. Sher Singh a covering candidate for Sh. Karnail Singh is also very inconsistent because according to Sh. Jangir Singh D.W. 9 it was decided on 5th November 1951 at about 10 or 11 A.M. that Sh. Sher Singh sent his resignation to the Deputy Commissioner, Hissar and got Raj D.W. 5 it was settled on the evening of 4th November 1951. At this stage it may be mentioned that Sh. Sher Singh who was also a lambardar had resigned his lambardari on 5th November 1951 before filing his nomination papers. I am not prepared to believe Sh. Jangir Singh that all this was done within the twinkling of an eye and after deciding on 5th November 1951 at about 10 or 11 A.M. Sh. Sher Singh sent his resignation to the Deputy Commissioner, Hissar and got it accepted before filing his nomination papers at about 2 and 3 P.M. To me it appears that Sh. Sher Singh having died Sh. Karnail Singh is taking advantage of the fact that Sh. Sher Singh had resigned his lambardari on 5th November 1951 otherwise it is clear that Sh. Sher Singh must have thought of it before and his resignation must have been presented at about 10 or 11 A.M. at Hissar because only in that case he could get the news before filing his nomination papers. To my mind Sh. Sher Singh's resignation of his lambardari is also a proof of the fact that he was serious about his nomination and not that he was only made to come forward as a covering candidate of Sh. Karnail Singh. It is further urged that Sh. Sher Singh could not think to fight election against Sh. Karnail Singh since the two were related to each other but it is a matter of common knowledge that the elections are fought between nearest relations and even between real brothers what to say of cousins or other relations. It is also worthy of notice that when Sh. Sher Singh's nomination papers were taken up for scrutiny it was he who himself took interest in it and Sh. Karnail Singh rendered him no help which goes to show that Sh. Sher Singh had filed his nomination papers independently of anybody otherwise Sh. Karnail Singh would have seen that Sh. Sher Singh's nomination papers were filed as completely as his own and in any case he would have helped him before the Returning Officer when a defect was found in his nomination papers. It is also argued that Sh. Karnail Singh filed his nomination papers at 1-30 and 1-35 P.M. while Sh. Sher Singh filed his nomination papers between 2 and 3 P.M. which would show that Sh. Sher Singh had been set up by Sh. Karnail Singh but I fail to realize the significance of this argument because all the nomination papers had to be filed up-to a particular time on 5th November 1951 and even Sh. Gur Raj Singh and Sh. Mustan Singh filed their nomination papers between 2 and 3 P.M. and that will not show that they were not serious about their nomination papers.

Lastly it is urged that since Sh. Sher Singh had died the electors could not exercise their franchise in favour of Sh. Sher Singh if a bye election is held and, therefore, it cannot be said that the voters had been kept out of any valuable right which existed to them. This argument is a very strange argument because we find that Sh. Sher Singh was alive till the election were over. His death subsequently would not matter because we have to see what the voters would have done and how they would have exercised their right of vote at the time of election, and not what would happen in a bye election if it has to held. It cannot be denied that if Sh. Sher Singh was alive he was not bound to stand in the bye election or even Sh. Karnail Singh if he is unseated, will not be bound to stand. Hence the fact that Sh. Sher Singh had died would not matter in any way.

In my opinion, therefore, the presumption which arises in favour of the fact that an election is materially affected if a nomination paper had been wrongly rejected has not been rebutted in this case because no such conduct of Sh. Sher Singh has been established which would go to show that he would have supported Karnail Singh in the election nor it is established that he would have withdrawn in favour of Sh. Karnail Singh and was not serious about his nomination papers. In fact there is not a word on the record that Sh. Sher Singh did help Sh. Karnail Singh in his election after he had failed in the High Court and even Sh. Karnail Singh had not dared to say a word in that direction. Issue No. 2(b) is, therefore, decided against the respondent.

Issue No. 3.—This issue has not been pressed at the time of arguments.

Issue No. 4.—It is conceded before us that the petitioners who are duly enrolled as voters in this particular Constituency have got the right to file the petition and the mere fact that it may go to benefit some one else would not matter and no further arguments were advanced to us on this issue.

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In view of the above findings I am of the opinion that the nomination papers of Sh. Sher Singh were improperly rejected and this improper rejection had materially affected the result of the election of Dabwali Constituency and therefore, the election of Sh. Karnail Singh respondent to this seat is declared wholly void.

As regards costs, under ordinary circumstances I would have left the parties to bear their own costs but in view of the fact that Sh. Karnail Singh respondent had manufactured lot of evidence to support his pleas I would award Rs. 250/- (Two hundred and fifty only) as costs to the petitioners.

(Sd.) MAHARAJ KISHORE, *Chairman*,
Election Tribunal, Hissar.

The 16th May, 1953.

I agree

(Sd.) T. C. SETHI, *Member*.

The 16th May 1953.

AS PER GURBAKSH SINGH GYANI, MEMBER, ELECTION TRIBUNAL.

I had the advantage of reading the order proposed by the Learned Chairman. The other Member, Shri T. C. Sethi, has agreed with it. With all due deference to the learned colleagues, I regret my inability to agree with the proposed order.

The most remarkable feature of this petition is, that this election has not been called in question by any of the candidates, but by the two electors of this constituency, who are so charitable as to take up cudgels on behalf of the respondent No. 1 (Shri Sher Singh). They allege in para. 14 of the election petition that "Illegal and improper rejection of the nomination papers of respondent No. 20 (Shri Sher Singh) has materially affected the result of the election in this constituency as the whole of the electorate in this constituency has been deprived of the exercise of its right to vote for respondent No. 20 and the election is, therefore, liable to be declared as wholly void". Whereas, Shri Sher Singh (now deceased) respondent No. 20 not only contradicts, but categorically denies all the allegations in para. No. 14 of the statement filed by him before the Chairman, Election Tribunal, on 6th September 1952. He added further in his statement that even if the nomination papers filed by him had been held to be valid by the Returning Officer, he would have withdrawn from the contest by the date fixed for the withdrawal of the nomination in favour of respondent No. 1 (Shri Karnail Singh, the successful candidate). There is absolutely no basis for the assertion made in para. 14 of the petition that by the rejection of his nomination papers, the electorate in this constituency had been deprived of the exercise of its right for him and that on that score the election is liable to be declared void.

2. So everything in this case is to be judged in the light of this important statement and other peculiar circumstances which seem rather un-paralleled in the history of the election petitions.

3. The Tribunal framed the following four issues in this case:—

1. Whether the nomination paper of Shri Sher Singh respondent No. 20 was invalidly and illegally rejected by the returning officer and was the defect pointed out only of a technical nature and the respondent was located outright by the returning officer notwithstanding this defect which was enough for him according to law and if so its effect? (Onus objected to).
2. (a) What is the effect of Sher Singh respondent's conduct in this petition so far that he is supporting the pleas advanced by respondent No. 1 and is not contesting the election of respondent No. 1?
2. (b) Whether Sher Singh would have withdrawn from the contest in favour of respondent No. 1 and if so, rejection of his nomination paper did not affect the result of the election in any way?
3. Whether the nomination paper of Sher Singh was defective and invalid on other grounds (detailed in para 10 of the written statement) besides the one on which it was rejected and can those grounds be now taken up and if, so, what is its effect?
4. Whether the petitioners have not filed their petition in good faith and they have only been set up by respondent No. 2 and if so its effect?

4. First of all I shall take up issue No. 4.

It is urged for respondent No. 1 that the petition is 'a' binami one and that really it has been brought about at the instance of Shri Ram Dial Vaid respondent No. 2 (the runner up candidate) and should be thrown out. As the petitioners are though technically competent to file an election petition, they have not done so in a *bonafide* manner.

5. From the record it appears that petitioner No. 1 (Shri Ajayab Singh) lost all interest after filing the election petition. The power of attorney alleged to have been given by Shri Ajayab Singh petitioner on 1st August 1952, in favour of Sh. Nunya Mal, Advocate is not signed by him. Similarly power of attorney alleged to have been given by the petitioners filed on 7th November 1952, in favour of Messrs Paras Dass, Nunya Mal and Bakhshi Ram Kishen Advocates is not signed either by Shri Ajayab Singh or Shri Ram Lal.

6. The replications to the written statements of respondents No. 1 and 20 filed on 18th November 1952, do not bear the signatures of Sh. Ajayab Singh Petitioner No. 1.

7. He has further not appeared as a witness in this case, which shows that he himself is not keen, but has filed the petition at the instance of some one else. As regards Shri Ram Lal it is alleged, that he instituted the Election Petition at the instigation of Shri Ram Dial respondent No. 2 whom he helped in the last election, as deposed by him in this case. However, Shri Ram Dial Vaid respondent No. 2 has denied this fact; but he admits this much in his deposition that petitioner No. 2 (Shri Ram Lal) was his partner for 2 years in a grocer's shop. Even if it is held that the petitioners have been put up by the respondent No. 2 Shri Ram Dial Vaid to fight this election petition, it is of no avail to respondent No. 1 as under section 81(1) of the REPRESENTATION OF THE PEOPLE ACT, 1951 an Election Petition calling in question any election may be presented by any candidate of such election or any elector. It makes no mention of their *bonafides* and good faith.

8. In view of the clear provision of law, I see, no force in this objection and decide issue No. 4 in favour of the petitioners and they are quite competent to move the election petition.

9. As regards issue No. 1. The *goravamen* of the charge is, that the nomination papers of respondent No. 20 (Shri Sher Singh) were invalidly and illegally rejected by the Returning Officer. Both the parties have led evidence on this point. The petitioners contend that the nomination papers of respondent No. 20 (Shri Sher Singh) were complete and legal in all respects. They bore full description which was sufficient to identify and locate him in the Electoral Roll of the constituency and the non entry of the name of the part (sub-division) of the Electoral Roll in column No. 8 of the nomination papers of the respondent No. 20 did not make any difference and this defect was of a most technical nature and there is no force or substance in it. They further contend, that at the time of the presentation, the Returning Officer ought to have legally asked respondent No. 20 to add the name of part as well, if he considered necessary adding, that the provision being directory only and its purpose being facilitation of location of the candidate by the other candidates and the Returning Officer. They further alleged that the respondent No. 20 was located outright, without any difficulty and thus his nomination papers were illegally and improperly rejected. All the allegations were controverted by respondent No. 1 and evidence was led by both the parties. All this evidence can be termed as tainted being of partisan character but the evidence of D.W. 1 Shri G. S. Mann, Returning Officer, in this case is, of very great importance. He supports the stand taken up by respondent No. 1. He stated, that he scrutinized the two nomination papers filed by Shri Sher Singh, respondent No. 20 on 9th November 1951 and rejected both of them (nomination papers are marked Ext. D.W. 1/1 and D.W. 1/2) vide orders Ext. D.W. 1/3 and D.W. 1/4 respectively. In column No. 8 of these 2 nomination papers the candidate has mentioned 1400 (ward No. 1), but had not specified the name of the town or the number of the part of the Electoral Roll containing his name and it was on that account, that he rejected the nomination papers. At the time of the scrutiny, he tried to find out the name of Shri Sher Singh, in the Electoral Roll from the description given in the nomination papers and he referred to some parts of the Electoral Rolls, but he could not find it out. He further added, that as far as, he remembered after some time had been spent in this manner. Shri Sher Singh himself, took out his name from the Electoral Roll and showed it to him. He also deposed, that he had told Sher Singh that he could not find out his name from the Electoral Roll and then he became busy in other work and in the meanwhile Shri Sher Singh, showed him his name from the Electoral Roll. He also stated, that respondent No. 20 was called Sher Singh Odhanwala. In cross examination he

further revealed, that even after Sher Singh had pointed out his particulars noted in the Electoral Roll he was not satisfied whether the entry he had pointed out to him related to Sher Singh, or to some other person of that name. However, he could not recollect, if he passed the orders of rejection on Sher Singh's nomination papers after or before Shri Sher Singh had pointed out his name from the Electoral Roll. He did not remember whether the entry shown to him by Sher Singh was against No. 1400 of Sirsa town or against some other number but that entry related to one Sher Singh. The independent character of the witness could not be assailed and the only point urged by the petitioners' counsel was that he could not depose definitely about certain facts. This was but natural as the scrutiny took place on 9th November 1951 and his evidence was recorded on 9th February 1953 and it is humanly impossible to remember the minute details, after such a long period. I have no reason to doubt his statement made on oath before us. The only other person who is vitally interested in this matter is Shri Sher Singh respondent No. 20 who unfortunately died a day before his evidence was to be recorded. In the circumstances his written statement which is admissible under sections 8 and 14 of the Indian Evidence Act, is the most important piece of evidence in this respect. He fully supports the statement of Shri G. S. Mann D.W. 1 the Returning Officer, in this case. The petitioner's counsel then took up the point of the certificate of scrutiny which read as below: on the nomination paper D.W. 1/1 of respondent No. 20.

"I have scrutinised the eligibility of the candidate the proposer and the seconder, and find that they are respectively qualified to stand for election, to propose and to second the nomination (Printed portion on the prescribed form)".

The typed order, dated 9th November 1951 below the above pointed lines reads, the name of the part in which the name of the candidate is written is not given. Rejected.

10. He advanced the arguments, that there was no doubt about the identity of the respondent No. 20 and if it had not been established the printed certificate mentioned above would have been scored out by the Returning Officer. It is however, significant, that no question was put in this respect to Shri G. S. Mann D.W. 1 to clarify his position with regard to this point. It was contended from the other side that either the Returning Officer missed to score it out or the typist who typed the order of rejection forgot to score it out. I think it was an important point on which elucidation was necessary and more particularly it was upto the counsel for the petitioner to have got this position cleared at the time when the Returning Officer was in the witness box. It appears the counsel did not raise this question, as he must have thought the answer to be unfavourable. In the light of the statement of the Returning Officer it is clear that he could not locate the name of respondent No. 20 Shri Sher Singh and his identity and eligibility was not established. Even, for the sake of arguments, if it is granted, that the eligibility and the identity of Shri Sher Singh respondent No. 20 was not in dispute then another point remains, that is, the validity of the nomination papers. Now validity of the nomination papers is quite different and distinct from the question of identity or eligibility of candidate. The two should not be confounded. Reference is invited to India Election Law by Sarin and Pandit at Page 312 where it is quoted "that a Returning Officer is empowered under the section to decide both the validity of the nomination paper and the identity and eligibility of the candidate or his proposer or seconder (a) it is one thing to say that the nomination form has not been properly filled in and quite another that the candidate, his proposer or the seconder is not identical with the person whose electoral number is stated in the form. The question whether the person who actually appears before the returning Officer and claims to be the candidate, or the proposer or the seconder is or is not identical with the person whose description is given in the electoral roll against the number given in the nomination paper, is altogether different one, and ought not to be confounded with the question what is stated in the form".

Similarly Khanna's Indian Election Cases, Volume IV at page 47, Doabias Election Cases 1864—1935 Volume I at page 214 Bareta-Budhlada constituency case, Gazette of India, dated 5-3-1953 at page 717 and Krishna Giri constituency case Gazette of India, dated 20th November 1952 at page 2462 are quoted in support of this contention.

11. It is admitted, that the nomination paper of Shri Sher Singh respondent No. 20 did not contain the name of the part (sub-division) of the Electoral Roll. The counsel for the respondent No. 1 contends that this material omission on the part of respondent No. 20 makes his nomination papers invalid. He contends that the new law is more stringent and emphatic as regards the giving of the name or

description of the electoral area (sub-division) in the columns in the nomination papers intended for that purpose than the old law. It was argued by the counsel for the petitioner that foot note No. 6 on the nomination paper only amounted to an instruction and was simply of a directory nature and noncompliance with that would not vitiate the nomination paper. If we examine the foot note (6) on the back of the nomination paper which reads "where the Electoral Roll is sub-divided into parts and separate serial Nos. are assigned to the electors entered in each part, a description of the part in which the name of the person concerned is entered must also be given in items No. 8, 10 and 14", we find the word used therein is 'must' which is of an imperative nature and mandatory, the non-compliance of which is fatal to the nomination paper. It may be stated that while formerly this matter was governed by a foot note now in addition to the warning contained therein it has been incorporated in the definition of "serial No." in rule 2 of The Representation of the People (conduct of election and election petitions) Rules, 1951. The words "serial No." has been substituted in the new law for the word 'No.' in the old law in order to lay more stress and emphasis on the series *viz.* the electoral area or the sub-division in which the No. is given.

12. Every nomination paper delivered under Sub-Section 1 of Section 33 shall be completed in the prescribed form. The word 'complete' is not defined in the Act and we have to take the ordinary dictionary meaning. In Chambers' Twentieth Century Dictionary the word 'complete' is defined as "free from deficiency: perfect: finished: entire" thus it would be seen that the nomination paper of respondent No. 20 lacked some thing and was not complete in the sense required by the law. It was argued by the counsel for the petitioner that this omission could have been got corrected at the time of the presentation of the nomination paper but a reference to Section 33 (5-a) of the Representation of the People Act would show, that the Returning Officer permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entry in the Electoral Rolls. It is significant, that the Legislature has used the word 'may' and permission is only given for correction in the case of clerical error and the total omission of 'particulars' enjoined by law to be filled in would not fall under the category of a clerical error. Again, it was argued, that the rejection of the nomination papers of respondent No. 20 was improper in view of clause No. 4 under Section 36 which reads that "The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character." Law was cited by the petitioner's counsel to show that the omission of the Sub-division (Electoral Area) is a technical defect not of a substantial character, but he was unable to advance any authority or precedent which could apply on all fours to the peculiar circumstances of this case and thus those rulings are distinguishable. Similarly counsel for the respondent contended that there is a large volume of opinion in support of the contention that the omission of the sub-division (Electoral Area) is a material and substantial defect on basis where a nomination paper can be properly rejected by the Returning Officer. However the following decisions which have some bearing on this point are quoted:

- (i) Naraipur case Gazette of India dated 4th March 1953 at page 681 in that case the omission of the name of the village where the name of the candidate was registered as a voter was held to be fatal to the nomination paper although the name of the constituency as well as the name of the police station had been given.
- (ii) Murshadabad constituency case, Gazette of India dated 18th December 1952 page 993 at 997, in this case the name and description of the Parliamentary constituency was not given. The omission was held to be fatal to the nomination paper, inspite of the fact that there was no doubt about the identity of the candidate who was described as a famous man in the political life of the country at page 997.
- (iii) The Bareilly Budhalada constituency case Gazette of India, dated 5th March 1953, at page 713 where the omission of the name of the proposer in the column meant for the purpose although his signatures appeared below it was considered to be fatal to the nomination paper.
- (iv) It has been laid down in the Jullundur city North-West constituency case Punjab Gazette dated 27th December 1952 at page 1620.

"The legislature has chosen the Returning Officer to decide such matters as the validity of Nomination paper and no right of appeal has

been granted to an aggrieved party to challenge such an order. The Tribunal can no doubt declare an election to be void if in its opinion the acceptance or rejection of nomination paper is improper. It seems to us that the Tribunal would be entitled to interfere with the orders of the Returning Officer only when a perversity or some violation of the principles of natural justice is to be discerned in the impugned order of the Returning Officer. In cases where a Returning Officer may give one of the two possible decisions, it would not be a fit case for interference of the Tribunal".

13. In view of the above discussion, I am of the opinion that the nomination paper of Shri Sher Singh, respondent No. 20 was properly rejected by the Returning Officer and the defect pointed out was not of a technical nature but of a substantial character and the Returning Officer could not locate respondent No. 20 outright as alleged by the petitioners.

14. As regards issue No. 2(a) the conduct of Shri Sher Singh respondent No. 20 in this case is most material to arrive at the right conclusion. As a matter of fact, he is the principal hero in this play for whom this drama has been set. It is contended on behalf of the petitioners that respondent No. 20 Shri Sher Singh was a very keen candidate at the time of the nomination but he is now colluding with the respondent No. 1. It is significant that there is no allegation of collusion or of complicity against respondent No. 20 in the body of the petition. On the other hand it has been professed that the election petition has been brought about in the interest of Shri Sher Singh respondent No. 20. It was only when the respondent No. 20 Shri Sher Singh filed a statement before the Chairman Election Tribunal on 6th September 1949 that the petitioners found themselves on the horns of a dilemma and took a summer sault and came forward with the allegations of 'pressure' put on the respondent No. 20, by Shri Karnail Singh, respondent No. 1, but no evidence was led on this point. It was for the first time that they changed their line of attack in the replication to the written statements of respondent No. 1 and respondent No. 20 filed on 18th November 1952. On finding the tables turned against them they fumbled for a fresh ground to fight the election petition and it was for the first time, that it was revealed by the petitioners that Shri Sher Singh, had filed a writ in the High Court of Judicature at Simla, to get the order of the Returning Officer set aside. As it would be shown presently that this writ was filed by respondent No. 20 Shri Sher Singh, in the interest of Shri Karnail Singh and it was misconstrued to serve as a handle against respondent No. 1 Shri Karnail Singh, and much capital was made out of this writ by the petitioners. Had it been filed by Sher Singh with the said object of getting the order of the Returning Officer rescinded to stand in the election, then it is not understood as to why such an important fact was not mentioned in the petition.

15. There is a difference of opinion and different construction is being placed on the filing of the writ by respondent No. 20 Shri Sher Singh. It is argued on behalf of the petitioners that originally Shri Sher Singh was a keen candidate and he kept his zeal till the said writ was rejected by the High Court of Judicature. On the other hand it is hotly contested that this writ was filed by respondent No. 20 Shri Sher Singh at the instance of respondent No. 1 Shri Karnail Singh, with an object to gain time, for the purpose of doing election propaganda as he was suffering from this impression that by moving the High Court, the election would be postponed as he had read in papers that this was being done at Bombay and other places.

16. The petitioners have produced 5 witnesses in all. P.W. 1 is Shri Prem Sukh Dass (respondent No. 13) he deposes that Sher Singh continued with his election propaganda till the decision of his appeal in the High Court. P.W. 2 Shri Gurcharan Singh (Respondent No. 8) also makes a reference to the effect, that Shri Sher Singh continued telling the Public after the rejection of his nomination that he had filed an appeal in the High Court and he expected that he would be successful. To impeach the character of this witness the counsel for the respondent, brought out in cross-examination that Sh Sahib Ram M.L.C. who is a Congress-man was once the Chairman of the Regional Transport authority under which his Transport Co., was working. Ch. Devi Lal, M.L.A. another congress-man is a member of the Regional Transport authority indicating thereby that the witness might have been influenced by them to give evidence. P.W. 3 Shri Gurnam Singh (Respondent No. 7) also makes a reference to the appeal filed by Shri Sher Singh in the High Court of Judicature at Simla. His enmity with Shri Sher Singh is proved on the record and his admission for helping the congress candidate Shri Ram Dial Vaid is also on the record. P.W. 4 is Pt. Ram Dial

respondent No. 2 who also deposes about the filing of appeal by Shri Sher Singh against the order of the Returning Officer. P.W. 5 is the petitioner Shri Ram Lal who mentioned in his statement that Shri Sher Singh carried on election propaganda till the decision of his appeal. This P.W. admits having helped Pt. Ram Dial respondent No. 2 in the last election being himself a congress man since 1919.

17. For the respondent No. 1 Shri Karnail Singh D.W. 13 Shri Jesa Ram Advocate, has been produced to prove the statement of respondent No. 20 whom he represented before the Election Tribunal. He has stated in very clear terms that the Jowab Dawa (written statement) dated 5th September 1952 was written by him under the instructions of respondent No. 20 (Shri Sher Singh) he read out to him and explained to him and the respondent signed it admitting it to be correct and he had also signed it. He further added that Shri Sher Singh respondent No. 20 was personally present in court on 6th September 1952 and the record supports this statement. He was not cross examined.

18. D.W. 14 Shri Jodh Singh, Advocate, of Sirsa deposed that he had applied at the instance of Shri Sher Singh (Respondent No. 20) to the Returning Officer for a copy of the order by which the nomination papers of Shri Sher Singh were rejected. This application is Ext. D.W. 14/1 which was returned to him by Shri G. S. Mann, Returning Officer, vide his order Ext. D.W. 14/2, dated 10th November 1951 as the Returning Officer asked the counsel to quote law under which he could get this copy. As he had not come across with any such law on this point, so this application remained with him. When Shri Sher Singh came to him he was accompanied by Shri Karnail Singh respondent. He enquired of Shri Singh respondent No. 20 as to why he wanted to go to the 'High Court' when Shri Karnail Singh's nomination paper had been accepted to which Shri Singh had replied that he was doing so with the consent and for the benefit of Shri Karnail Singh respondent. Shri Sher Singh had also informed him that the object of this writ was to get an order from the High Court, so that the election be postponed for some time and they could have more time for canvassing for Shri Karnail Singh. The witness further added that as far as he could see Shri Sher Singh had no intention to fight the election and he had told him that his sister's daughter was married with Karnail Singh and they both were one. In cross examination he admitted that he had opposed the name of Pt. Ram Dial Vaid respondent No. 2 as being considered for the congress ticket. D.W. 15 Shri Bachan Singh, is the brother of Shri Sher Singh deceased respondent No. 20. He stated that he and his brother (Shri Sher Singh) were permanently living at 'Odhan' and Shri Sher Singh was sick since 5 or 6 months before election. He suffered from Tuberculosis till his death. He was the lambardar of village 'Salam Khara' which is not in the Dabwali constituency. He had no intention to fight this election firstly because of his illness, and secondly he had no support in this constituency. Shri Karnail Singh respondent was married to his sister's daughter and their relationships were good and it was Shri Karnail Singh who sent Shri Sher Singh to Simla to file an appeal against the rejection of the nomination paper, because Karnail Singh wanted to gain time for his propaganda. D.W. 17 Shri Sher Singh of Chukarian is related to Shri Sher Singh deceased respondent No. 20. He supports the statement of Bachan Singh D.W. so far as the filing of the writ is concerned, as he himself had induced Shri Sher Singh deceased respondent No. 20 to file an appeal against the order of rejection. He also stood expenses incurred in connection with this writ and had actually accompanied respondent No. 20 Shri Sher Singh to Simla. He further added that after Shri Sher Singh had agreed to file the writ he (Shri Sher Singh deceased) went to the house of Shri Jodh Singh D.W. 13 along with Shri Karnail Singh for consultation. D.W. 18 is Shri Karnail Singh respondent No. 1, who has given evidence in support of the pleas taken up by him in this Election Petition. It is contended by the petitioner's counsel that this set of witnesses has been produced on second thought to meet the objection of 'writ' raised by the petitioners. It is further contended by him that Bachan Singh and Sher Singh are relatives of Shri Sher Singh (respondent No. 20 deceased) and Sh. Karnail Singh and their evidence is of interested nature and it was manufactured to meet the objection of the writ mentioned above. The relationship and interestedness in this case cuts both ways. If it can be argued that these witnesses are supporting the respondent No. 1 on that score then it was rightly contended by the other side that for that very reason Shri Sher Singh would have withdrawn in favour of the respondent No. 1. Moreover, in the matter of elections, it is only the relatives, helpers and supporters who are in the know of these things and of course it is upto the court to sift the truth.

19. As regards the first objection to this evidence the respondent's counsel argued that the necessity to produce these witnesses arose after the death of

Shri Sher Singh respondent No. 20, and thus Ch. Jesa Ram, D.W. 13, Advocate was produced to prove the statement and conduct of respondent No. 20, Shri Jodh Singh, D.W. 14 was examined to produce the application mentioned above and to prove the conduct of respondent No. 20 now deceased. As the application was filed by Shri Sher Singh through him it was but natural that he could be the only person who could depose about this fact and specially when it remained in his custody. Its genuineness cannot be attacked as it bears the signatures of Shri G. S. Mann, S.D.M., Sirsa, the then Returning Officer. No doubt he objected to the adoption of Shri Ram Dial Vaid, respondent No. 2 as a Congress candidate but it had nothing to do with the document he has produced, the authenticity of which is beyond doubt.

20. In view of this overwhelming evidence, I am led to believe that, the 'writ' filed by Shri Sher Singh, in the High Court of Judicature, at Simla was at the instance of Shri Karnail Singh, respondent No. 1 with a view to gain time for Karnail Singh.

21. It is not-worthy, to mention here that even according to the evidence led by the petitioners they have brought forward this fact, that Shri Karnail Singh and Shri Sher Singh belong to the 'Akali Party' with only this much difference, that the P.Ws. depose that Shri Sher Singh was the real candidate of the 'Akali party' and Shri Karnail Singh was his covering candidate. Whereas respondent No. 1 takes up the position, that he was the nominee of the 'Akali party' and he had asked respondent No. 20, Shri Sher Singh at the nick of the time to become his covering candidate; as the proposed covering candidate Shri Jahangir Singh P.W. could not stand as he had failed to get his name enlisted as a voter by the date of filing nomination papers. As such the conduct of Shri Sher Singh is a matter of vital importance to this petition and in absence of his support it cannot be held that the election was materially affected as it would be playing the 'Hamlet' without the Hamlet. His statement of withdrawal in favour of Shri Karnail Singh in unequivocal terms goes a long way to show his conduct which was consistent from the very beginning and he has not changed as alleged by the petitioners subsequently in the replications filed on 18th November 1952.

22. Now coming to issue No. 2(b) it may be pointed out at the very outset that it is only respondent No. 20 Shri Sher Singh who can authoritatively say on the point of withdrawal and as mentioned above he had declared in unambiguous terms in his written statement that he would have withdrawn in favour of Shri Karnail Singh, even, if his nomination paper had been accepted. The background of his this conduct can very well be judged from the fact that he was never keen to contest the election much less against the respondent No. 1 for the main reason that he was not keeping good health and suffering from Tuberculosis. He was only set up by Karnail Singh as a dummy candidate at the eleventh hour. The returns of expenses also show no expenditure which is a clear indication that he had spent nothing in respect of this election. His indifference to the election can further be established from this fact that he was disqualified *vide* Punjab Government Gazette (Extra) Notification on page 496, dated June 28, 1952, as he failed to lodge the returns of election expenses in the form required by law. This was technical defect and he could have got the disqualification removed but the fact remains that he was so reluctant that he did not care to move in this matter at all. All these circumstances coupled together have led me to hold that he was not keen at all to contest the election and he would have withdrawn in favour of respondent, even, if his nomination papers had not been rejected.

23. Now, the last vital question is whether the rejection of the nomination paper of respondent No. 20 Shri Sher Singh has materially affected the result of this election.

24. This is a generally accepted view of the various Election Tribunals that the improper rejection of a nomination paper *ipso-facto* affects materially the result of election, but this initial presumption is not irrebutable.

25. The evidence led by the petitioners show that Shri Sher Singh respondent No. 20 was a nominee of the 'Akali Party' and Shri Karnail Singh respondent No. 1 was a covering candidate whereas the latter claims *vice versa*. Thus there is no dispute about this fact that both respondent No. 20 Shri Sher Singh and respondent No. 1, Shri Karnail Singh belong to one party i.e. 'Akali Party'. The nomination papers which were proved are D.W. 1/1, D.W. 1/2 of Sh. Sher Singh and D.W. 18/2, D.W. 18/3 and D.W. 18/4 are that of Shri Karnail Singh. The request for the allotment of symbol of both the respondent was for 'Bow and Arrow' i.e. the symbol of the 'Akali Party'. Respondent No. 1 produced D.W. 2.

who is the President of the Akali Jatha Hissar and D.W. 3 who is the Secretary of the same Jatha. They stated that they had recommended Shri Karnail Singh as the main candidate and Shri Jahangir Singh D.W. 9 as the second candidate for the 'Akali ticket'. They however add, that they did not recommend respondent No. 20 Shri Sher Singh for being adopted as an Akali candidate. Sher Singh respondent No. 20 had not applied for the Akali ticket. There is no allegation on the file to show that they were not the office bearers of the said 'Akali Jatha' hence their evidence on this point stands un-impeached. D.W. 4 Shri Samburan Singh, Jathedar of the Akali Dal, PEPSU was deputed by the High Command of the 'Akali Dal' to tour the Dabwali Constituency and to find out who will be the best candidate out of Shri Karnail Singh and Shri Jahangir Singh. He recommended the name of Shri Karnail Singh. Similarly D.W. 5, 6, 7, 8, 9, and 10 support the contention of Shri Karnail Singh being the nominee of the 'Akali Party'. D.W. 11 Assistant Secretary of the 'Shiromani Akali Dal', Amritsar, produced file No. 26 relating to the election papers of Dabwali constituency. In this file Ext. D.W. 12/3 is the letter along with its registered cover sent by Bishan Singh, D.W. 2 who forwarded 2 applications i.e. of Shri Karnail Singh respondent No. 1 and Shri Jahangir Singh recommending Shri Karnail Singh at No. 1 and giving second place to Jahangir Singh. Ext. D.W. 12/4 is the letter from Shiromani Akali Dal, Amritsar, dated 16th October 1951 desiring Jathedar, Akali Dal Hissar, to recommend the suitable candidate for 'Dabwali Constituency' by 21st October 1951. D.W. 12/1 is the application of Shri Karnail Singh requesting for the allotment of 'Akali ticket' for 'Dabwali Constituency' and it is addressed to Shiromani Akali Dal, Amritsar. Ext. D.W. 12/2 is the application of Shri Jahangir Singh requesting for the Akali Ticket for 'Dabwali Constituency'. It is also addressed to Shiromani Akali Dal, Amritsar. Both the applications are in printed form and in the Punjabi script. Ext. D.W. 12/5 is the list of the nominees of the Akali Party for the House of the People and the Punjab Legislative Assembly. The name of respondent No. 1 Shri Karnail Singh is entered under "Hissar District" for "Dabwali Constituency". D.W. 12 Sardar Hukam Singh M.P., President Akali Dal deposed that the 'Akali Party' nominated Shri Karnail Singh, respondent for the 'Dabwali Constituency'.

26. All this evidence goes to show that Karnail Singh was the nominee of the 'Akali Party' for this seat. It was contended on behalf of the petitioner that the evidence was of a partisan character but according to the arguments of the respondent's counsel these were the only witnesses who could be produced on this point, as it is only from the evidence of these office bearers of the 'Akali Party' that it could be shown as to whom the 'Akali Party' gave its ticket. Some minor discrepancies were pointed out but the lapse of time intervening between the election and dates of evidence in court is more than a year and thus too long a period to allow to remember minor details in such matters.

27. From all this discussion of the evidence, it is established that Shri Sher Singh, respondent No. 20 had no land and influence in the Dabwali constituency. He was a sickly person suffering from Tuberculosis and an induced covering candidate for Shri Karnail Singh respondent No. 1. He did not incur any expenditure on the election and his return of expenses show 'Nil Expenditure' which belie the statements of P.Ws. that Sher Singh was carrying on his propaganda till 20th November 1951. It would be too much, to call him a keen candidate; as his own statement stands in his way and the fact that he did not even care to apply for the removal of the disqualification imposed by the Election Commission as mentioned above falsifies all the allegations of the petitioners. In fact he himself being an Akali, which is not denied by the petitioners, he had a common cause with Shri Karnail Singh respondent No. 1.

28. All these facts leave no doubt, that this election could not have been affected in any way not to speak of 'materially affecting' even if the nomination papers of the respondent No. 20 had been accepted, hence I decide issue No. 2(a) and 2(b) against the petitioners.

29. The prayer of the petitioner to the effect that Shri Sher Singh respondent No. 20 may be declared to be duly nominated and that Poll may be taken, but on account of the death of Shri Sher Singh *statu quo* cannot be restored and the prayer appears to have become infructuous.

30. In view of the special attendant circumstances of this peculiar case I find that the initial presumption has been amply rebutted and it has not materially affected the result of the election. In support of this view the following two cases are cited which to some extent are identical.

- (i) Jullundur City constituency case, Punjab Gazette dated 27th December 1952 at page 1820 bottom. The Tribunal considered the mere fact that the candidate Dr. Ram Rakha Mal whose nomination paper has been rejected stated that he had no interest in the matter, along with certain other matters to be sufficient to rebut the presumption.
- (ii) Bikaner Tehsil constituency case, Gazette of India, dated 20th January 1953, pages 171 and 172: In this case it was held that the fact that the rejected candidate and the successful candidate were of the same party was along with certain other matters sufficient to rebut the presumption.

So far issue No. 3 is concerned it was not pressed on the part of the respondent No. 1.

31. It would not be out of place to mention here that there is no decision of any Election Tribunal voiding an election where the rejected candidate was not the petitioner or he did not support a voter-petitioner by his written statement and by his evidence. Similarly there is no decision of any Election Tribunal voiding an election where the candidate whose nomination paper was rejected was dead and therefore, the electorate could not exercise his right of vote in his favour.

32. Before concluding, I would like to repeat the general exposition of law in the matter of setting aside the election as expressed in the weighty observations of Baron Martin in the Warrington case cited in 1920 Calcutta page 669, at page 670:

"I adhere, said Baron Martin in the Warrington case (6) to what Willies, J. said at Lichfield that a Judge to upset an election, ought to be satisfied beyond all doubt, that the election was altogether void, and that the return of a member is a serious matter and not to be lightly set aside."

My findings are therefore, that the petition be dismissed and the parties left to bear their own costs in view of the peculiar circumstances of this case.

(Sd.) GURBAKSH SINGH GYANI,
Bar-at-Law.

The 16th May, 1953.

Member, Election Tribunal, Hissar.

ORDER

We, by majority of opinion hold that the Nomination Papers of Shri Sher Singh were improperly rejected and this improper rejection had materially affected the result of election of Dobwall Constituency and, therefore, the election of S. Karnail Singh respondent to this stat is declared wholly void. We further order that respondent Sardar Karnail Singh should pay Rs. 250 as costs to the petitioners.

ANNOUNCED

(Sd.) MAHARAJ KISHORE, Chairman.

The 16th May, 1953.

(Sd.) T. C. SETHI, Member.

(Sd.) GURBAKSH SINGH GYANI, Member.

PRESENT:

Bakhshi Ram Kishan, Advocate, for the petitioners.

Respondent S. Karnail Singh in person.

ANNOUNCED.

(Sd.) MAHARAJ KISHORE, Chairman.

The 16th May, 1953.

(Sd.) T. C. SETHI, Member.

(Sd.) GURBAKSH SINGH GYANI, Member.

[No. 19/111/52-Elec.III/7923.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.